

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-220680.3

DATE: June 3, 1986

MATTER OF: Flight Resources Inc.

DIGEST:

A party that submits late Step 1 proposal is not an interested party to protest the evaluation of proposals or any changes in the terms and conditions of the solicitation that occur during or after proposal evaluation when those issues only affect the parties to the competition.

Flight Resources Inc. protests solicitation No. DTFA15-85-R-10011, issued by the Federal Aviation Administration (FAA), Department of Transportation, to obtain proposals for the operation of a general aviation service facility at Washington National Airport. The procurement was conducted under two-step sealed bidding procedures.^{1/} Flight Resources contends that the procurement was defective because the Step 1 negotiations resulted in such substantial changes to the agency's requirement that the procurement should have been resolicited with all potential offerors, including Flight Resources, invited to compete.

We dismiss the protest.

^{1/} The procedure used in the two-step sealed bidding are set forth in the Federal Acquisition Regulation (FAR), subpart 14.5 (FAC 84-5, April 1, 1985). Step 1 is similar to a negotiated procurement and consists of a request for technical proposals without price to determine the acceptability of the supplies or services offered. In Step 2, sealed bids are invited from those who submitted acceptable technical proposals in Step 1. After evaluation of the Step 2 bids, award is made to the responsible bidder with the lowest responsive bid. Hewlett-Packard Co., et al., B-216125.2, May 24, 1985, 85-1 CPD ¶ 597.

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This protest is Flight Resources' third attempt, after failing to submit a timely Step 1 technical proposal, to compete for award under this solicitation. The proposal due date was September 5, 1985; the firm's proposal was not submitted until September 20, and it was thereafter returned because it was late. Flight Resources' initial protest to the agency, alleging that the agency should have extended the closing date for receipt of proposals, was dismissed as untimely. Its subsequent protest to this Office was also dismissed as untimely because the protest to the agency did not comply with the time limits of our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1985). Flight Resources, Inc., B-220680, Oct. 25, 1985, 85-2 CPD ¶ 467. A request for reconsideration resulted in affirmance of the dismissal. Flight Resources, Inc., B-220680.2, Nov. 12, 1985. Although this current protest initially included several grounds of protest, Flight Resources has withdrawn certain issues, leaving for resolution a challenge to Flight Resources' status as an interested party, and the protester's allegation that the Step 1 negotiations had so changed the requirements that a new solicitation should have been issued.

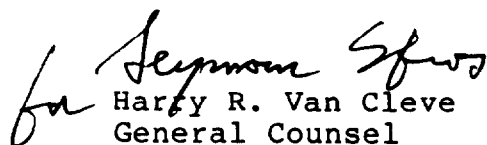
Under our Bid Protest Regulations, 4 C.F.R. § 21.1(e), only an "interested party" may protest to our Office. Whether a party is sufficiently interested depends on the party's status in relation to the procurement and the issues involved and how these circumstances show the existence of a direct or a substantial economic interest on the part of the protester. NEFF Instrument Corp., B-216236, Dec. 11, 1984, 84-2 CPD ¶ 649. A party that would not be in line for award if its protest is sustained is generally not an interested party. Zinger Constr. Co., Inc., B-220203, Oct. 31, 1985, 85-2 CPD ¶ 493. In some cases, if the remedy sought is not award under the protested solicitation, but cancellation and resolicitation of the requirement and the protester is a potential competitor on the new solicitation, the protester has the necessary direct interest to be an interested party. Tracor Jitco, Inc., B-220139, Dec. 24, 1985, 85-2 CPD ¶ 710. However, a protester does not become "interested" merely by seeking cancellation and resolicitation. Thus, a party that submits a late proposal does not have standing to protest the evaluation of proposals or any changes in the terms and conditions of the solicitation that occurs after or during the course of proposal evaluation, since these issues only affect the parties that remain in the competition and only they have a direct economic interest in the outcome.

In this case, Flight Resources first asserts that the Step 1 solicitation required that each proposal provide a

statement detailing the amount of investment in fixed improvements and operating facilities at the aviation service facility the offeror would make if awarded the contract. Flight Resources contends that after the Step 1 discussions, the FAA, for evaluation purposes, improperly limited to \$2,200,000 the amount of investment for fixed improvements that an offeror could have added to the guaranteed minimum offered to the government for the contract. Flight Resources insists that the Step 1 solicitation made no reference to changes or putting caps on the investment and that this change was substantial and prejudicial "to the economic interest[s] and willingness to bid by the other potential offeror . . ." We fail to see how a change occurring after Step 1 technical discussions could conceivably keep any firm from entering the initial competition, nor do we believe that any firms other than those that submitted timely proposals have a legitimate stake in this issue. Since only those offerors that submitted timely Step 1 proposals have a legitimate interest in the evaluation, Flight Resources is not an interested party to protest this issue because it has no direct economic interest in the outcome. 4 C.F.R. 21.0(a) (1985).

Flight Resources also complains about a change to an obligation of the contractor to amortize its required investment in a new fuel farm over the 5 year period of the contract. This was changed after the Step 1 discussions to permit the contractor to amortize its investment over 10 years. Flight Resources contends that this is a substantial change and that the initial 5 year period kept many qualified firms from entering into the competition. We do not find Flight Resources to be a party of sufficient interest to challenge this issue either. As noted earlier, Flight Resources in fact attempted to submit its proposal under step 1 of the solicitation. Although the proposal was not considered because it was late, there was no suggestion that the 5 year amortization schedule limited the protester's ability to compete for the award of the contract. By failing either to submit a timely proposal or a timely protest of what it now alleges was an unduly restrictive requirement, Flight Resources cannot be considered "an active or perspective bidder or offeror whose direct economic interest would be affected by the award of a contract" 4 C.F.R. § 21.0(a).

The protest is dismissed.


Harry R. Van Cleve
General Counsel